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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Mater Case No.: 3:07-cv-05944-SC
MDL No. 1917
Individual Case Nos. 3:11-cv-05513-SC;
3:11-cv-06396-SC

This document relates to:

Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al.
No. 11-cv-05513-SC

Target Corp. v. Chunghwa, et al.,
No. 11-cv-05514-SC

Tech Data v. Hitachi, Ltd., et al.
No. 13-cv-00157-SC

**PLAINTIFFS BEST BUY, TARGET,
AND TECH DATA'S CONSOLIDATED
OPPOSITION TO DEFENDANT
BEIJING MATSUSHITA COLOR CRT
CO., LTD.'S MOTION TO DISMISS
CERTAIN DIRECT ACTION
PURCHASER COMPLAINTS**

Date: January 24, 2014
Time: 10:00 a.m.
Before the Honorable Samuel Conti

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1 Plaintiffs Best Buy Co., Inc., Best Buy Purchasing, LLC, Best Buy Enterprise Services,
2 Inc., Best Buy Stores, L.P., Bestbuy.com, LLC, and Magnolia Hi-Fi, LLC, Plaintiff Target Corp.,
3 and Plaintiffs Tech Data Corporation and Tech Data Product Management, Inc. (collectively,
4 "Plaintiffs"), submit this Memorandum of Law in Opposition to Defendant Beijing Matsushita
5 Color CRT Co., Ltd.'s ("BMCC") Motion to Dismiss Certain Direct Action Purchaser
6 Complaints as follows:

7 **I. STATEMENT OF ISSUES TO BE DECIDED**

8 1. Whether BMCC waived lack of personal jurisdiction as a defense;
9 2. Whether this Court has personal jurisdiction over BMCC;
10 3. Whether BMCC waived insufficient service of process as a defense; and
11 4. Whether service of process on BMCC was effective.

12 **II. INTRODUCTION**

13 **A. Personal Jurisdiction**

14 After litigating in this MDL for five years and in this case for two years, BMCC now moves
15 to dismiss claiming that the Court lacks jurisdiction over it. BMCC's Motion is baseless and the
16 Court should deny it for multiple reasons.

17 **Waiver**

18 BMCC has waived its personal jurisdiction argument by failing to include it in multiple
19 prior Rule 12 motions and by actively participating in this MDL and action for years. By way of
20 example only, BMCC has accepted service of process, served initial disclosures, objected to
21 discovery requests, entered into stipulations, answered complaints, filed motions to dismiss and
22 status conference statements, produced documents, attended a deposition, responded to written
23 discovery, and supplemented written discovery. For this reason alone, BMCC's Motion should
24 be denied.

25 **Minimum Contacts**

26 The exercise of jurisdiction is proper based on both purposeful direction and purposeful
27 availment. BMCC purposefully directed its misconduct at the United States by participating in a
28 conspiracy, the purpose and effect of which was to raise and fix the prices of cathode ray tubes

1 (CRTs) and CRT products sold here. BMCC participated in numerous meetings with its co-
 2 conspirators, submitted to the decision-making and instructions of its co-conspirators, and
 3 exchanged information with its affiliates regarding the United States CRT market, [REDACTED]
 4 [REDACTED]. These
 5 facts independently establish jurisdiction.

6 Further, BMCC knew and expected that a substantial amount of its CRTs and resulting
 7 CRT products would be sold in the United States. BMCC was the second largest manufacturer of
 8 CRTs in China during the conspiracy period, and it knew that the United States was the largest
 9 market for CRT products. As one expert has opined, approximately 160,275 CRT Products
 10 containing BMCC's CRTs, worth approximately \$10.7 million, were sold to natural persons
 11 between 1995 and 2007 in California alone. BMCC participated in the conspiracy, monitored the
 12 United States CRT market, and exchanged information with others to ensure that products
 13 containing its CRTs would remain competitive in the United States, thereby ensuring its
 14 profitability then and for years to come.

15 For all these reasons, the Court should find that BMCC has minimum contacts with the
 16 United States under either a purposeful direction or purposeful availment analysis, and should
 17 exercise jurisdiction over it. Moreover, having litigated in this forum for over five years through
 18 Freshfields Bruckhaus Deringer US LLP ("Freshfields") – one of the largest law firms in the
 19 world – BMCC can hardly complain now that the exercise of jurisdiction would be unreasonable.
 20 It certainly has not and cannot establish the "compelling case" it is required to make.

21 **B. Service of Process**

22 As with its personal jurisdiction defense, BMCC has waived its insufficient service of
 23 process defense by omitting it from previous Rule 12(b) motions and by actively litigating in this
 24 MDL and action for years.

25 In addition, BMCC's arguments regarding the propriety of service merely regurgitate
 26 arguments considered and rejected by this Court numerous times. The Court has already granted
 27 Plaintiff's Rule 4 motion over BMCC's objection. There is no reason to entertain BMCC's
 28 arguments again, and this Court should summarily reject them.

1 For all these reasons, the Court should deny BMCC's Motion in its entirety.

2 **III. FACTUAL BACKGROUND**

3 **A. BMCC Has Actively Litigated this Action for More Than Five Years**

4 BMCC first appeared in this MDL through Freshfields on July 17, 2008. *See* Dkt. No. 332.

5 Since then, BMCC has accepted service of process, served initial disclosures, objected to
6 discovery requests, answered complaints, entered into stipulations, filed motions to dismiss and
7 status conference statements, produced documents, attended a deposition, responded to written
8 discovery, and supplemented written discovery. *See* Loh Decl. ¶ 32, Exs. A, B, and C.¹

9 **1. BMCC stated its intent to raise personal jurisdiction as a defense in
10 October 2008**

11 The personal jurisdiction defense was available to BMCC as early as October 15, 2008. On
12 that date, BMCC filed its Objections to certain discovery requests. In them, BMCC stated as
13 follows: "BMCC objects to Paragraph 4 of the Discovery Stipulation to the extent that it seeks to
14 prematurely compel information that is untimely and inappropriate given BMCC's intent to raise
15 the issue of a lack of personal jurisdiction if BMCC is named in plaintiffs consolidated amended
16 complaint. BMCC has served plaintiffs with a statement of its intent to assert a personal
17 jurisdiction defense as required by Paragraph 4(g) of the Discovery Stipulation." *See* Dkt. 400.

18 **2. Despite stating its intent to raise personal jurisdiction as a defense, BMCC
19 subsequently omitted the defense in multiple Rule 12(b)(6) motions**

20 On May 18, 2009, BMCC filed a Rule 12(b)(6) motion to Dismiss Direct Purchaser
21 Plaintiffs' ("DPPs") Consolidated Amended Complaint and Indirect Purchaser Plaintiffs' ("IPPs")
22 Consolidated Amended Complaint, and joined Rule 12(b)(6) motions filed by various defendants.
23 None of these motions contained any argument that the Court lacked personal jurisdiction over
24 BMCC. *See* Dkt. Nos. 463, 479, 485, 546, 551, and 555.

25 Nearly one year later, on April 29, 2010, BMCC raised personal jurisdiction as a defense in
26 its Answer to the DPPs' Consolidated Amended Complaint. *See* Dkt. 677.

27
28 ¹ *See also* Dkt. Nos. 372, 400, 463, 479, 485, 546, 551, 555, 614, 619, 667, 677, 678, 780, 813,
858, 936, 975, and 1043.

3. The Best Buy, Target, and Tech Data actions, and BMCC's failed opposition to Plaintiffs' service motion under Rule 4(f)(3)

Best Buy and Target filed their complaints against BMCC and others on November 14, 2011. Thereafter, on April 10, 2012, the Best Buy and Target Plaintiffs filed a Motion to Serve BMCC through its United States Counsel pursuant to Rule 4(f)(3). *See* Dkt. 1147. On June 27, 2012, over BMCC’s objection, this Court ordered that service be effected on BMCC through its United States counsel. *Id.* In so holding, the Court noted that the requested method of service had already been used in the CRT cases and that, on September 3, 2008, the Court had granted a Motion by the IPPs to serve process on two foreign corporations under Rule 4(f)(3).² *Id.* The Court also noted that BMCC was represented by the same counsel – Freshfields – in the CRT litigation, and had previously accepted service in the IPP action. *Id.*

After losing its service of process challenge, BMCC responded to the Best Buy and Target Plaintiffs' complaints by filing answers on August 24 and September 14, 2012, respectively. *See* Dkt. Nos. 1328 and 1346. Both answers raise personal jurisdiction as an affirmative defense. *Id.*

Tech Data filed its complaint on December 11, 2012. BMCC did not file an answer in response to the complaint.

B. BMCC's Corporate Relationship with Other Defendants and Co-Conspirators

BMCC was a joint venture company. From 2002 through 2009, Defendant Matsushita Toshiba Picture Display Co., Ltd. (“MTPD”), a subsidiary of Defendant Matsushita Electric Industrial Co., Ltd. (“Matsushita” or “Panasonic”), owned 50 percent of BMCC.³ *See Best Buy* FAC ¶¶ 43, 44; *Tech Data* FAC ¶¶ 45, 46; *Target* SAC ¶¶ 37, 38; *see also* *Kinoshita Decl.* ¶ 6.

² Similarly, in the *In re: TFT-LCD (Flat Panel) Antitrust Litigation*, No. M:07-1827-SI (“LCD Litigation”), Judge Illston invariably issued orders granting motions to serve defendants through their United States counsel pursuant to Rule 4 on twenty-one occasions. *See* Dkt Nos. 725, 1309, 1657, 1779, 2109, 2532, 2539, 2584, 2747, 2748, 2825, 3079, 3217, 3345, 3394, 3443, 3654, 3655, 4785, 4797, and 4798.

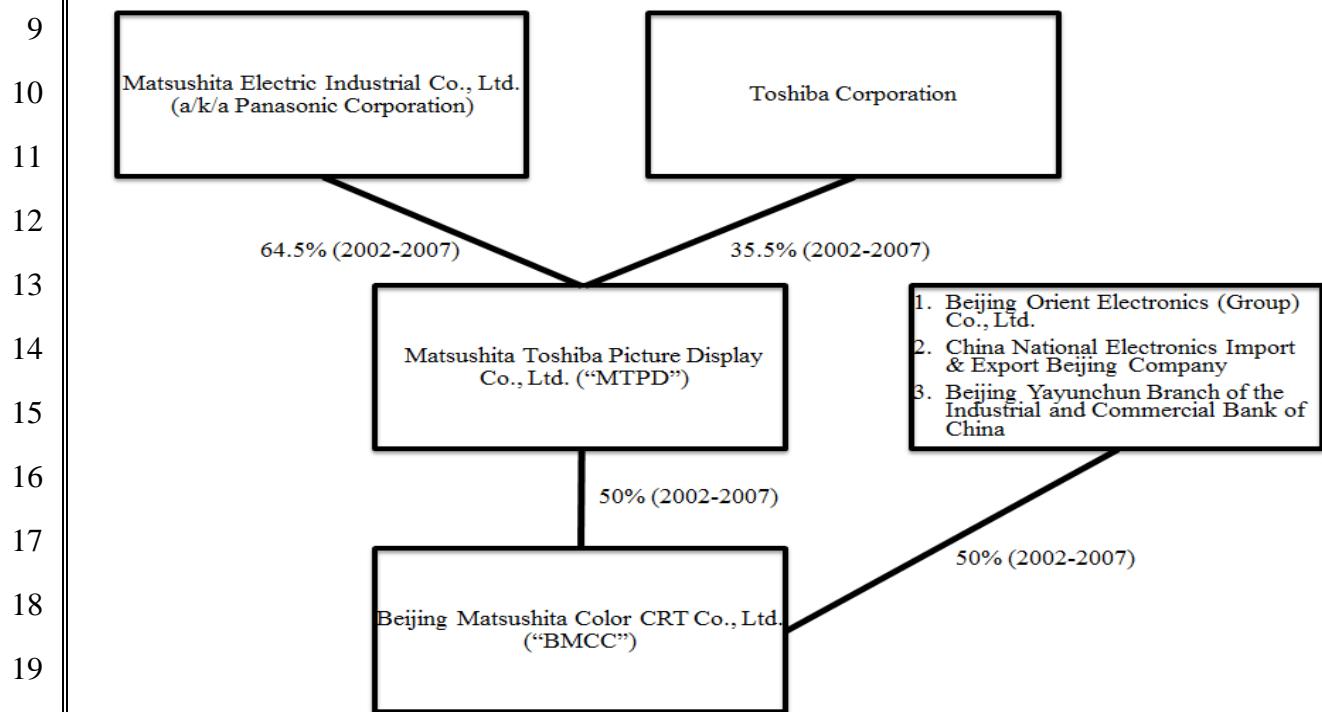
³ Three Chinese companies - Beijing Orient Electronics (Group) Co., Ltd., China National Electronics Import & Export Beijing Company (a China state-owned enterprise), and Beijing Yayunchun Branch of the Industrial and Commercial Bank of China (a China state-owned enterprise) – owned the other 50 percent of BMCC. See Best Buy FAC ¶ 44; Tech Data FAC ¶ 46; Target SAC ¶ 38

. See Loh Decl. Ex. D at pgs. 6, 11, 12, 17, 18, 27, 37, and 38.

MTPD was formed in 2002 as a joint venture between Panasonic and Defendant Toshiba.

See Best Buy FAC ¶ 43; Tech Data FAC ¶ 45; Target SAC ¶ 37. Panasonic was the majority owner, owning 64.5 percent of MTPD. *Id.* Toshiba owned the other 35.5 percent. *Id.*

On March 30, 2007, Panasonic purchased Toshiba's 35.5 percent stake in MTPD, making MTPD Panasonic's wholly-owned subsidiary. *Id.* The relationship between Panasonic, MTPD (later renamed to MT Picture Display Co., Ltd.), and BMCC is illustrated as follows:



Notably, Panasonic personnel moved interchangeably throughout MTPD, BMCC, and the other Panasonic affiliated entities. The Declaration of Ayumu Kinoshita, submitted by BMCC in support of its motion, for example, shows that he worked at MTPD from October 2004 to May 2006, and was stationed at BMCC from April 2005 to May 2006. *See* Kinoshita Decl. ¶ 2. After becoming a BMCC employee in May 2006, he became an employee of a Panasonic division in March 2008 and, in January 2013, became a Panasonic employee where he still works today. *Id.*

But Panasonic, MTPD, and BMCC shared more than just common employees. As set forth below, these entities and other Panasonic affiliates routinely shared information with each other

1 and worked together to artificially inflate the prices of CRTs and CRT Products in the United
2 States.

3 **C. Plaintiffs Allege, and the Evidence Shows, that BMCC Participated in the CRT
4 Conspiracy and Targeted the United States**

5 Between at least 1998 and 2007, BMCC participated in a conspiracy to fix, maintain, and/or
6 stabilize the prices of CRTs sold in the United States. *See* Best Buy FAC ¶¶ 1, 4, 14, 44; Tech
7 Data FAC ¶¶ 1, 4, 15, 46; Target SAC ¶¶ 1, 3, 14, 38. The conspiracy was extremely successful,
8 affecting “billions of dollars of commerce throughout the United States.” *See* Best Buy FAC ¶ 7;
Tech Data FAC ¶ 7; Target SAC ¶ 6.

9 **1. BMCC participated in the glass meetings to raise the price of CRTs and
10 CRT Products sold throughout the United States**

11 BMCC and its co-conspirators participated in a series of meetings called “glass meetings”
12 in which they agreed on the prices at which they sold CRTs to their own corporate affiliates. In
13 turn, the corporate affiliates manufactured finished CRT products such as televisions and
14 computer monitors. *See* Best Buy FAC ¶¶ 116-130, 146; Tech Data FAC ¶¶ 121-134, 152;
15 Target SAC ¶¶ 109-124, 140. By keeping the internal pricing to their affiliated OEMs at a high
16 enough level to support the CRT pricing in the market to other OEMs, BMCC and its co-
17 conspirators ensured that all OEMs paid supracompetitive prices for CRTs, including those in the
18 United States. *See* Best Buy FAC ¶¶ 14, 127; Tech Data FAC ¶¶ 15, 132; Target SAC ¶¶ 14, 120.

19 The Chinese glass meetings began in 1998 and generally occurred on a monthly basis. *See*
20 Best Buy FAC ¶ 120; Tech Data FAC ¶ 125; Target SAC ¶ 113. These meetings had the
21 principal purpose of reporting what had been decided at the most recent glass meetings to the
22 Chinese manufacturers. *Id.* Participants at the Chinese meetings included the manufacturers
23 located in China, such as IRICO and BMCC, as well as the China-based branches of the other
24 defendants and co-conspirators. *Id.*

25 BMCC participated in no less than [REDACTED] glass meetings between 1998 and 2007.
26 *See* Best Buy FAC ¶ 146; Tech Data FAC ¶ 152; Target SAC ¶ 140; *see also* Loh Decl. Ex. E at
27 pgs. 29, 38, 42, 44, 45, 47, 54, 66, 68, 70, 72, 75, 76, 78, 80, 81, 82, 83, 84, 85 ([REDACTED]
28 [REDACTED]; Loh Decl. Exs. F at 407:3-22, and G at 238:2-23 ([REDACTED])

1 [REDACTED]
2 [REDACTED]; Loh Decl. Ex. O ([REDACTED]
3 [REDACTED]
4 [REDACTED]). High-level sales managers from5 BMCC attended these meetings. *See* Best Buy FAC ¶ 146; Tech Data FAC ¶ 152; Target SAC ¶
6 140. BMCC also engaged in multiple bilateral discussions with other defendants, particularly the
7 other Chinese CRT manufacturers. *Id.* Through these discussions, BMCC agreed on prices and
8 supply levels for CRTs. *Id.* At all times, BMCC acted to further its own private interests. *Id.*9 Aside from participating in the glass meetings, the evidence also demonstrates that BMCC
10 abided by the directives of its co-conspirators. [REDACTED]
11 [REDACTED]
12 *See* Loh Decl. Ex. H at CHU00029193E.
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] *Id.* at CHU00029194E.16 The evidence reveals that BMCC complied with directives like these. [REDACTED]
17 [REDACTED]
18 [REDACTED]19 **2. BMCC, by and through its Panasonic affiliates, directed its anticompetitive
20 conduct at the United States**21 Like BMCC, Panasonic and its affiliates, including MTPD, participated in bilateral and
22 glass meetings. *See* Best Buy FAC ¶¶ 112, 136, 143, 145; Tech Data FAC ¶¶ 117, 141, 149, 151;
23 Target SAC ¶¶ 105, 137, 139; Loh Decl. Exs. J ([REDACTED]
24 [REDACTED]
25 [REDACTED]; Ex. CC at 294:1-298:10, 312:22-317:1 ([REDACTED]
26 [REDACTED]27 ⁴ CRTs can be subdivided into CDTs and CPTs. CPTs are used primarily in televisions and
28 related devices and CDTs are primarily used in computer monitors and similar devices. *See* Best
Buy FAC ¶¶ 2, 86; Tech Data FAC ¶¶ 2, 91; Target SAC ¶¶ 1, 79.

1 [REDACTED]; Ex. B at 121:18-123:21 ([REDACTED]). BMCC used and
 2 [REDACTED]). BMCC used and
 3 worked with those entities to target its anticompetitive conduct at the United States.

4 Deposition testimony reveals, for example, that [REDACTED]

5 [REDACTED] *See Loh Decl. Ex. K at 423:17-424:11 ([REDACTED])*
 6 [REDACTED]). This testimony

7 squarely refutes BMCC's assertion that [REDACTED]

8 [REDACTED].
 9 Numerous documents also demonstrate that BMCC and Panasonic exchanged information
 10 relating to the United States CRT market. [REDACTED]

11 [REDACTED] *See Loh Decl. at Ex. L.*

12 [REDACTED]
 13 *Id.* [REDACTED]

14 [REDACTED]
 15 *Id.; see also Loh Decl. at Ex. M ([REDACTED])*

16 [REDACTED]
 17 [REDACTED].
 18 [REDACTED].
 19 E-mail correspondence dated [REDACTED] also shows how BMCC and MTPD worked
 20 together to implement price increases in the United States. *See Loh Decl. Ex. N.* [REDACTED]

21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

26⁵ During the conspiracy, Orion was a major manufacturer of CRT Products. In 1995,
 27 approximately 85% of Orion's \$1 billion in sales was attributed to CRT Products. Orion was
 28 involved in CRT Products sales and manufacturing joint ventures and had subsidiaries all over the
 world, including the United States. *See Best Buy FAC ¶ 73; Tech Data FAC ¶ 76; Target SAC ¶*
 66.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 *Id.* at MTPD-0335676E_Translation.
13 BMCC responded by [REDACTED]
14 [REDACTED]
15 *Id.* at MTPD-0335675E_Translation. As such, BMCC [REDACTED]
16 [REDACTED]
17 *Id.* [REDACTED] *Id.*; see also Loh Decl. Ex. B
18 at 344:4-345:23 ([REDACTED]
19 [REDACTED]); Exs. P and Q ([REDACTED]
20 [REDACTED]).
21 Similarly, BMCC's documents [REDACTED]
22 [REDACTED]
23 [REDACTED]. See Loh
24 Decl. Exs. R-Z.
25
26
27
28 _____
6 Kazuto Ueda was [REDACTED]. See Loh
Decl. Ex. B at 154:15-20, 344:4-11.

3. BMCC participated in the conspiracy in order to realize massive profits

BMCC profited handsomely by participating in the conspiracy. BMCC was the second largest manufacturer of CRTs in China (*see* Best Buy FAC ¶ 44; Tech Data FAC ¶ 46; Target SAC ¶ 38), and the CRTs it manufactured were sold, marketed, and distributed throughout the United States, the world's largest market for CRT televisions and computer monitors at the time.

See Best Buy FAC ¶¶ 14, 146, 160; Tech Data FAC ¶¶ 15, 152, 167; Target SAC ¶¶ 14, 140, 154; Loh Decl. Ex. K at 420:8-421:10 ([REDACTED])

[REDACTED]). By participating in the conspiracy, BMCC ensured that the CRTs it manufactured for the billion-dollar United States CRT market were sold at artificially high prices, significantly increasing its profit margins. *See* Best Buy FAC ¶¶ 14, 44, 116-130, 146; Tech Data FAC ¶¶ 15, 46, 121-134, 152; Target SAC ¶¶ 14, 38, 109-124, 140. At least one expert has opined that, between 1995 and 2007, an estimated \$10.7 million dollars' worth of CRTs manufactured by BMCC was sold in California alone. *See* Loh Decl. Ex. AA at pg. 6-7.

IV. STANDARD OF REVIEW

“When a district Court acts on a defendant’s motion to dismiss under Rule 12(b)(2), without holding an evidentiary hearing, the plaintiff need make only a *prima facie* showing of jurisdictional facts to withstand the motion to dismiss. That is, the plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant.” *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (citations committed). Moreover, “uncontroverted allegations in plaintiff’s complaint must be taken as true, and conflicts between the facts contained in the parties’ affidavits must be resolved in plaintiff’s favor.” *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2008) (citing *Rio Props, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002)).

V. BMCC HAS WAIVED ITS PERSONAL JURISDICTION DEFENSE

A. BMCC Has Waived Personal Jurisdiction By Omitting the Defense From Its Previous 12(b)(6) Motions

With limited exceptions, parties who file Rule 12 Motions are required to assert every objection or defense available to them at the time. Parties who fail to do so waive such objections

1 and defenses by omission, including with respect to personal jurisdiction. Fed. R. Civ. Proc. 12
 2 (g) and (h); *Parker v. United States*, 110 F.3d 678, 682 (9th Cir. 1997) (noting that all defenses
 3 then available to a party and which may be brought by a Rule 12 Motion must be raised in the
 4 Motion or be lost); *Simpkins v. District of Columbia Government*, 108 F.3d 366, 368 (D.C. Cir.
 5 1997) (“If the party only raises a Rule 12(b)(6) objection, then the party has waived insufficiency
 6 of service of process and lack of personal jurisdiction.”). The purpose of this rule is to ensure the
 7 diligent prosecution of Rule 12 challenges at the earliest possible time, and to deter the dilatory
 8 tactic of filing serial Rule 12(b) Motions. *See Aetna Life Ins. Co. v. Alla Med. Services, Inc.*, 855
 9 F. 2d 1470, 1475, fn. 2 (9th Cir. 1988) (noting that “a series of motions should not be permitted
 10 because that results in delay and encourages dilatory tactics.”); *Marcial Ucin, S.A. v. SS Galicia*,
 11 723 F.2d 994, 997 (1st Cir. 1983) (“The objective of Rule 12 is to eliminate unnecessary delay at
 12 the pleading stage by requiring the presentation of an omnibus pre-answer motion in which
 13 defendant advances every available Rule 12 defense.”).

14 Here, BMCC waived its personal jurisdiction defense by failing to raise it in its prior Rule
 15 12(b)(6) motions. On October 15, 2008, BMCC expressed its intent to raise personal jurisdiction
 16 as a defense. *See* Dkt. 400. However, when BMCC filed its Rule 12(b)(6) motion on May 18,
 17 2009 (and joined other defendants in filing similar Rule 12(b)(6) motions that same date), it failed
 18 to do so. *See* Loh Decl. Dkt. Nos. 463, 479, 485, 546, 551, 555. BMCC’s omission is fatal
 19 because, although Plaintiffs filed their complaints thereafter, its allegations are the same now as
 20 they were then – i.e., BMCC allegedly has no offices in the United States, allegedly did not
 21 advertise in the United States, and allegedly did not sell CRTs to companies in the United States.
 22 Moreover, BMCC is represented by the same counsel and, therefore, had every opportunity to
 23 raise the defense but simply chose not to.

24 BMCC may argue that it has not waived personal jurisdiction because its prior Rule
 25 12(b)(6) motions were against different plaintiffs. This argument is meritless, however, given the
 26 consolidation of all actions in this MDL. *See In re Polyester Staple Antitrust Litig.*, 2008 U.S.
 27 Dist. LEXIS 43865 at *77-78 (W.D.N.C. Apr. 1, 2008) (rejecting argument that party had waived
 28 the defense with respect to only one defendant, noting that all cases within the MDL had been

1 consolidated and, therefore, were treated and managed as one.). As a matter of policy, BMCC's
 2 argument that it can preserve an objection it should have raised earlier would circumvent and run
 3 afoul of the purpose of Rule 12's waiver provisions.

4 On these facts, BMCC has waived its personal jurisdiction defense by failing to raise it in
 5 prior Rule 12 Motions. *See, e.g. Schnabel v. Lui*, 302 F.3d 1023, 1033 (9th Cir. 2002) (finding
 6 that, under Rule 12(h)(1), defendant waived its lack of personal jurisdiction and insufficiency of
 7 service of process defenses by failing to raise them in its first motion under Rule 12(b)); *Church*
 8 *of Scientology v. Linberg*, 529 F. Supp. 945, 966-967 (C.D. Cal. 1981) (same) (overruled on other
 9 grounds in *Schnabel*, 302 F.3d at 1034); *Markel Am. Ins. Co. v. Pac Asian Enters.*, 2008 U.S.
 10 Dist. LEXIS 60536 at *7 (N.D. Cal. Jul. 28, 2008) (noting that defendants, "each having brought
 11 a Rule 12 motion without challenging personal jurisdiction, have waived that defense.").

12 **B. BMCC Has Waived Personal Jurisdiction by Participating In the Litigation**

13 BMCC's active participation in this litigation for over five years has also resulted in a
 14 waiver. Although a party may technically preserve its objections under Rule 12, waiver may still
 15 "be implied by conduct and inaction, such as entering an appearance, filing motions and
 16 requesting relief, or participating in hearings or discovery." *In re Polyester Staple Antitrust*
 17 *Litig.*, 2008 U.S. Dist. LEXIS 43865 at *65 (quotations omitted).

18 In *In re Polyester Staple Antitrust Litig.*, for example, two separate plaintiffs – Avondale
 19 Mills and Burlington – filed suit against defendant Celanese AG. 2008 U.S. Dist. LEXIS 43865
 20 at *12. Avondale Mills filed suit first. *Id.* at *66. In response, Celanese AG filed an answer that
 21 asserted lack of personal jurisdiction as an affirmative defense, but did not separately move for
 22 dismissal thereafter. *Id.* Burlington filed suit two years after Avondale Mills. *Id.* at *71. In
 23 response to Burlington's action, however, rather than file an answer as it did with Avondale
 24 Mills, Celanese AG moved for dismissal on personal jurisdiction grounds. *Id.* Burlington
 25 opposed the motion, arguing that Celanese AG waived its personal jurisdiction defense by
 26 participating in the action over a two-year period. *Id.* at *71-72.

27 The Court agreed, holding that, although Celanese AG did not formally waive its personal
 28 jurisdiction defense under Rule 12, its actions and inactions constituted waiver. The Court found

1 that Celanese AG's failure to act over a two-year period was "more than a sufficient lapse of time
 2 to support a finding of waiver" as a "litigant's decision to sit on its rights indefinitely is entirely
 3 inconsistent with a Rule 12(b)(2) threshold challenge claiming lack of personal jurisdiction." *Id.*
 4 at *74, 78. The Court noted that had Celanese AG participated in discovery individually (as
 5 opposed to collectively with its subsidiary entities), that would have further established waiver.
 6 *Id.* at *76-78. The Court also rejected Celanese AG's argument that it had only waived the
 7 defense with respect to Avondale Mills, noting that all of the cases within the MDL had been
 8 consolidated and, therefore, were treated and managed as one. *Id.* at *77-78; *see also Hamilton v.*
 9 *Atlas Turner, Inc.*, 197 F.3d 58, 60-62 (2nd Cir. 1999) (while defendant raised personal
 10 jurisdiction as an affirmative defense in its answer, defendant forfeited the defense by
 11 participating in pretrial proceedings for four years before moving to dismiss on personal
 12 jurisdiction grounds); *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1297 (7th Cir. 1993)
 13 (affirming district court's finding that defendants' active participation in the litigation for two-
 14 and-a-half years did not comply with the spirit of Rule 12(h) and, therefore, constituted waiver of
 15 their personal jurisdiction defense).

16 The facts here establish waiver even more so than these cases. As set forth above, BMCC
 17 expressed its intent to raise personal jurisdiction as a defense as early as October 2008 and
 18 formally raised it as a defense in its April 29, 2010 answers to the DPPs' and IPPs' Consolidated
 19 Complaints. *See* Dkt. Nos. 677 and 678. Even if the Court were to use the April 29, 2010 date,
 20 three-and-a-half years elapsed before BMCC's current motion. In addition, BMCC has actively
 21 participated in this litigation for over five years. Under these facts, BMCC has waived its
 22 personal jurisdiction defense and the Court should deny its motion accordingly.

23 **VI. THE COURT HAS SPECIFIC PERSONAL JURISDICTION OVER BMCC**

24 A Court may exercise specific personal jurisdiction over a nonresident defendant if the
 25 defendant has minimum contacts with the forum state such that the exercise of jurisdiction "does
 26 not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*,
 27 326 U.S. 310, 316 (1945) (citation and quotations omitted). In performing this analysis, the Ninth
 28 Circuit applies a three-part test: "(1) The non-resident defendant must purposefully direct his

1 activities or consummate some transaction with the forum or resident thereof; or perform some
 2 act by which he purposefully avails himself of the privilege of conducting activities in the forum,
 3 thereby invoking the benefits and protections of its laws; (2) the claim must be one with arises out
 4 of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must
 5 comport with fair play and substantial justice, i.e., it must be reasonable." *CollegeSource, Inc. v.*
 6 *AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011); *see also Schwarzenegger v. Fred Martin*
 7 *Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2003).

8 Once Plaintiffs satisfy the first two prongs, the burden shifts to BMCC to set forth a
 9 "compelling case" that the exercise of jurisdiction would not be reasonable. *Id; see also Burger*
 10 *King Corp. v. Rudzewicz*, 471 U.S. 462, 476-478 (1985). Moreover, the Ninth Circuit has
 11 adopted a flexible approach that allows Plaintiffs to make a "lesser showing of minimum contacts
 12 'if considerations of reasonableness dictate.'" *Ochoa v. J.B. Martin & Sons Farms*, 287 F.3d
 13 1182, 1188, fn. 2 (9th Cir. 2002).

14 Here, the relevant forum for the Court's minimum contacts analysis is the United States.
 15 *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d 1406, 1415-1416 (9th Cir. 1989) (where statute
 16 authorizes nationwide service of process, national contacts analysis is appropriate).

17 **A. BMCC Purposefully Directed Its Activities at the United States**

18 Although the first prong refers to both purposeful availment and purposeful direction, in
 19 cases involving tortious conduct the Ninth Circuit most often employs a purposeful direction
 20 analysis. *CollegeSource*, 653 F.3d at 1076; *Schwarzenegger*, 374 F.3d at 802. Also known as the
 21 "effects test", the Court's analysis focuses "on the forum in which the defendant's actions were
 22 felt, whether or not the actions themselves occurred within the forum." *Yahoo Inc. v. La Ligue*
 23 *Contre le Racisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc). Thus, Courts will find
 24 jurisdiction if the defendant allegedly "(1) committed an intentional act, (2) expressly aimed at
 25 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum
 26 state." *CollegeSource*, 653 F.3d at 1077 (citation and quotations omitted).

27 *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 U.S. Dist. LEXIS 131809 (N.D. Cal.
 28 Nov. 9, 2011), which involved an alleged conspiracy to price-fix TFT-LCD panels sold within the

1 United States, is illustrative. Like BMCC, Mitsui Taiwan moved to dismiss for lack of personal
2 jurisdiction and submitted evidence that it was headquartered in and organized under the laws of
3 Taiwan, had no presence in the United States, never sold or distributed TFT-LCD panels in the
4 United States, never billed or invoiced, negotiated, received revenue, shipped, or otherwise
5 entered into any agreements for the sale or distribution of TFT-LCD panels or products in the
6 United States, and never had any meetings or discussions with any other defendant or alleged
7 coconspirator in the United States. *Id.* at *8-9.

8 Despite this evidence, the court held that jurisdiction existed over Mitsui Taiwan. Citing
9 various documents submitted by the plaintiff, the Court found that Mitsui Taiwan had worked
10 with other affiliated Mitsui entities – i.e., Mitsui USA – to fix the price of TFT-LCD panels sold
11 within the United States. Because Mitsui Taiwan’s conspiratorial activities were expressly
12 targeted at the United States, its activities were sufficient to satisfy the “purposeful direction”
13 prong of the specific jurisdiction analysis. *Id.* at *11-15.

14 The Court should find the same here based on the uncontested allegations of the
15 complaints alone. *See Brayton Purcell*, 606 F.3d at 1127 (noting that uncontested allegations
16 in a plaintiff’s complaint must be taken as true on a motion to dismiss); *Rio Props, Inc. v. Rio*
17 *Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (same). While BMCC argues that Panasonic
18 was ultimately responsible for selling CPTs to the United States, BMCC’s artful declaration does
19 not deny that BMCC participated in glass meetings, conspired with Panasonic and its affiliates to
20 fix the price of CRTs, and did so to benefit from their inclusion in CRT Products sold within the
21 United States. *See Best Buy* FAC ¶¶ 14, 44, 116-130, 146, 160; *Tech Data* FAC ¶¶ 15, 46, 121-
22 134, 152, 167; *Target* SAC ¶¶ 14, 38, 109-124, 140, 154.

23 Furthermore, the evidence and all reasonable inferences drawn from it support these
24 allegations. The evidence demonstrates that products containing BMCC’s CRTs were sold
25 throughout the United States and that these sales were purposeful. Thus, BMCC participated in a
26 global conspiracy to fix the prices of CRTs aimed at the United States. Among other things, the
27 evidence shows that:

28 • [REDACTED]

1 [REDACTED] (see Loh
 2 Decl. Exs. E⁷-G, H, I, K, O, L, M, N, O, P, Q, R-Z, BB);
 3 • [REDACTED]
 4 (Id., Exs. H, I, L, M, N, O, BB);
 5 • [REDACTED]
 6 (Id., Exs. B, L, M, N, O, BB);
 7 • [REDACTED]
 8 (Id., Exs. B, L, M, N, O, P, Q, BB);
 9 • [REDACTED]
 10 (Id., Exs. R-Z);
 11 • [REDACTED]
 12 (Id., Exs. J, K, AA); and
 13 • [REDACTED] (Id., Exs. B at
 14 232:25-233:14, Ex. M, BB; *see also* Kinoshita Decl. ¶ 23).

15 In short, BMCC directed its activities at the United States and intended to impact the
 16 market for CRT products within it. These facts establish purposeful direction. *In re TFT-LCD*
 17 (*Flat Panel*) *Antitrust Litig.*, 2011 U.S. Dist. LEXIS 131809 at *13-15; *see also* *Learjet, Inc. v.*
 18 *Oneok, Inc.* (*In re W. States Wholesale Natural Gas Antitrust Litig.*), 715 F.3d 716, 742-745 (9th
 19 Cir. 2013) (finding allegations of anticompetitive behavior directed at forum sufficient on their
 20 own to satisfy purposeful direction); *Electrograph Sys., Inc. v. Epson Imaging Devices Corp.* (*In*
 21 *re TFT-LCD (Flat Panel) Antitrust Litig.*), 2012 U.S. Dist. LEXIS 12063 at *39-41 (N.D. Cal.
 22 Feb. 1, 2012) (finding evidence plaintiff directed anticompetitive conduct at American company
 23 sufficient to establish personal jurisdiction); *In re Plasma-Derivative Protein Therapies Antitrust*
 24
 25
 26
 27
 28

⁷ For Exhibit E, see pages 29, 38, 42, 44, 45, 47, 54, 66, 68, 70, 72, 75, 76, 78, 80, 81, 82, 83, 84, 85.

1 *Litig.*, 764 F. Supp. 2d 991, 1004 (N.D. Ill. 2011) (denying motion to dismiss for lack of person
 2 jurisdiction where evidence did not contradict allegations in complaint that defendant participated
 3 in antitrust conspiracy directed at controlling the supply of plasma therapies in the United States);
 4 *Olenicoff v. UBS AG*, 2010 U.S. Dist. LEXIS 144474 at *30 (C.D. Cal. Mar. 16, 2010) (finding
 5 personal jurisdiction where defendants did not provide declarations disproving all activities
 6 related to directing the conspiracy at Plaintiffs in the United States); *Vehimax Int'l, LLC v. Jui Li
 7 Enter. Co.*, 2010 U.S. Dist. LEXIS 42801 at *12-13 (C.D. Cal. Mar. 16, 2010) (noting alleged
 8 anticompetitive conduct directed at persons residing or doing business throughout the United
 9 States was sufficient to find personal jurisdiction); *Williamson v. Am. Mastiff Breeders Council*,
 10 2009 U.S. Dist. LEXIS 53974 at *19 (D. Nev. Mar. 6, 2009) (“Exercising personal jurisdiction
 11 over [defendants] seems appropriate here because they purposefully directed their conspiracy
 12 toward the forum state.”); *In re Bulk [Extruded] Graphite Prods. Antitrust Litig.*, 2004 U.S. Dist.
 13 LEXIS 29586 at *25 (D.N.J. Oct. 26, 2004) (“Plaintiffs’ allegation that [defendant] intentionally
 14 participated in an international conspiracy that directed its wrongful activity at residents of the
 15 United States is sufficient to confer specific personal jurisdiction over [defendant].”).

16 Nothing in BMCC’s motion changes this result. BMCC’s reliance on *In re Dynamic
 17 Random Access Memory (DRAM) Antitrust Litigation*, for example, is misplaced. *See* Mot. at
 18 15:20-16:11. There, the *DRAM* plaintiffs failed to “offer any evidence that defendants knew that
 19 DRAM products related to them would reach the forum states” *See* 2005 U.S. Dist. LEXIS
 20 30299 at *21 (N.D. Cal. Nov. 7, 2005). Also, the *DRAM* plaintiffs failed to allege defendants’
 21 conspiratorial acts were targeted towards plaintiffs whom defendants knew to be residents of the
 22 forum. *Id.* at *20.

23 In stark contrast to *DRAM*, Plaintiffs here expressly allege that BMCC participated in the
 24 conspiracy; that the conspiracy’s purpose and effect was to fix, raise, stabilize, and maintain the
 25 prices for CRTs; and that the conspiracy was aimed at the United States. *See* Best Buy FAC ¶¶ 1,
 26 4, 7, 13, 14, 44, 120, 146; Tech Data FAC ¶¶ 1, 4, 7, 14, 15, 46, 125, 152; Target SAC ¶¶ 1, 3, 6,
 27 13, 14, 38, 113, 140. Moreover, and as discussed above, the evidence demonstrates that BMCC
 28 purposefully directed its anticompetitive conduct at the United States market. *DRAM* is thus

1 inapposite. *See, e.g., Electrograph*, 2012 U.S. Dist. LEXIS 12063 at *40 (declining to follow
2 *DRAM* due to lack of evidence on purposeful direction).

3 BMCC's other cited cases - *In re Chocolate Confectionary Antitrust Litig.*, 674 F. Supp. 2d
4 580 (M.D. Pa. 2009) and *Patent Incentives, Inc. v. Seiko Epson Corp.*, 1988 U.S. Dist. LEXIS
5 9933 (D.N.J. Sept. 6, 1988) – are also inapposite. *See* Mot. at 15:13-16. From the outset, the
6 Court should disregard *Chocolate* because, unlike here, the *Chocolate* court did not employ either
7 the effects test or stream of commerce theory to analyze whether personal jurisdiction existed.⁸
8 674 F. Supp. 2d at 596 fn. 23 (noting “plaintiffs no longer advocate for jurisdiction under stream-
9 of-commerce and Calder principles”). Moreover, both *Chocolate* and *Patent Incentives* are
10 inapposite because, in those cases, there was no evidence that the defendants directed their
11 anticompetitive conduct at consumers in the United States. *Id.* at 604 fn. 34; *Patent Incentives*,
12 1988 U.S. Dist. LEXIS at *21-22.

13 **B. Jurisdiction also exists based on BMCC's purposeful availment**

14 As an alternative method of analyzing purposeful availment, “where a foreign defendant
15 has designed or manufactured a product that is then sold by another in the domestic market,
16 Courts have employed a ‘stream of commerce’ metaphor to determine whether exercise of
17 jurisdiction is proper.” *Monje v. Spin Master Inc.*, 2013 U.S. Dist. LEXIS 75330 at *12 (D. Ariz.
18 May 29, 2013). In the Ninth Circuit, “[t]he placement of a product into the stream of commerce,
19 without more, is not an act purposefully directed toward a forum state.” *Id.* (citing *Holland Am.
20 Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007)). As to what that something
21 more is, the Supreme Court’s concurring opinion⁹ in *J. McIntyre Machinery, Ltd. v. Nicastro*
22 suggests that taking specific steps to deliver goods in the stream of commerce “with the
23 expectation that they will be purchased” by residents of the forum is sufficient, so long as the
24 goods are part of the “regular course” of sales. 131 S. Ct. 2780, 2792 (2011).

25 ⁸ The *Chocolate* court employed a quid-pro-quo analysis to determine personal jurisdiction. 674
26 F. Supp. 2d at 604, fn. 64.

27 ⁹ “When a fragmented Court decides a case and no single rationale explaining the result enjoys
28 the assent of five Justices, the holding of the Court may be viewed as that position taken by those
Members who concurred in the judgments on the narrowest grounds.” *Marks v. United States*,
430 U.S. 188, 193 (1977) (internal quotation marks omitted).

1 Here, the stream of commerce theory applies because BMCC admits that CRTs it
 2 manufactured made their way to the United States. *See* Kinoshita Decl. ¶ 23; *see also* *DRAM*.,
 3 2005 U.S. Dist. LEXIS 30299 at *20-21 (observing that stream of commerce theory applies to
 4 antitrust case where defendant knows that its product will reach the forum state). The question
 5 becomes then, whether BMCC has taken additional steps to subject it to jurisdiction in the United
 6 States. It has.

7 As set forth above, the evidence and uncontested allegations of the Complaints
 8 demonstrate that BMCC worked with Panasonic and its affiliates to specifically fix the price of
 9 CRTS sold in the United States and, therefore, BMCC expected and intended for its CRTs to be
 10 sold in the United States as part of its regular course of business. *See* Loh Decl. Exs. A-CC.
 11 Also, given that BMCC was the second largest manufacturer of CRTs in China at the time of the
 12 conspiracy, and that the United States was the largest market for CRT televisions and computer
 13 monitors in the world, the reasonable inference is that hundreds of thousands of CRTs
 14 manufactured by BMCC were sold throughout the United States during the conspiracy period.
 15 Indeed, one expert has opined that millions of dollars' worth of CRT products containing
 16 BMCC's CRTs were sold in California alone during the conspiracy period. *See* Loh Decl Ex.
 17 AA. Based on these facts, the Court should also find that BMCC purposefully availed itself to the
 18 United States under a stream of commerce theory.

19 **C. This Action Arises Out Of and Relates to BMCC's Conduct**

20 In determining whether Plaintiffs' action arises out of and relates to BMCC's contacts with
 21 the forum, the Ninth Circuit relies on a "but for" test. *See* *Ballard*, 65 F.3d at 1500; *Learjet*, 715
 22 F.3d at 742 ("This court has referred to the second prong of the specific jurisdiction test as a 'but
 23 for' test."); *Fireman's Fund Ins. Co. v. National Bank of Coops.*, 103 F.3d 888, 894 (9th Cir.
 24 1996) (equating "arising out of" requirement with "but for" test).

25 Here, Plaintiffs easily satisfy the second prong. But for BMCC's anticompetitive conduct,
 26 Plaintiffs would not have sustained any damage. As such, the Court should find that Plaintiffs
 27 meet the second prong. *See* *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 U.S. Dist. LEXIS
 28 131809 at *15 (finding plaintiff's injury directly related to defendant's conspiratorial activities).

1 **D. BMCC Fails to Prove That the Exercise of Jurisdiction Over It Is Unreasonable**

2 BMCC fails to present a “compelling case that the exercise of jurisdiction would not be
 3 reasonable.” *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). In determining whether it
 4 would be reasonable to exercise jurisdiction, Courts generally look to seven factors: (1) the extent
 5 of the defendant’s purposeful interjection; (2) the burden on the defendant in defending in the
 6 forum; (3) the extent of conflict with the sovereignty of the defendant’s state; (4) the forum
 7 state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the
 8 controversy; (6) the importance of the forum to plaintiff’s interest in convenient and effective
 9 relief; and (7) the existence of an alternative forum. *Fiore v. Walden*, 688 F.3d 558, 582-583 (9th
 10 Cir. 2012). As set forth below, all of these factors favor a finding that it would be reasonable to
 11 exercise personal jurisdiction over BMCC.

12 As to the first factor, BMCC argues that the extent of its interjection is minimal because the
 13 allegations set forth in Plaintiffs’ complaints are general and the Kinoshita declaration shows that
 14 BMCC did not have minimum contacts with the United States. *See* Mot. at 20:1-3. Because the
 15 allegations and evidence show otherwise as set forth above, the first factor weighs heavily in
 16 favor of jurisdiction.

17 Second, the burden on BMCC is small. The Ninth Circuit has explained that “the advent of
 18 modern transportation certainly has made the burden of defending in a foreign forum more
 19 palatable.” *Ballard v. Savage*, 65 F.3d 1495, 1501 (9th Cir. 1995) (citation and quotation
 20 omitted). Moreover, BMCC’s counsel has already litigated this action for more than five years,
 21 appearing numerous times on behalf of BMCC, accepting service of process, filing motions to
 22 dismiss, and answering complaints, further weighing in favor of reasonableness. *See* Dkt. Nos.
 23 332, 372, 400, 463, 479, 485, 546, 551, 555, 614, 618, 667, 677, 678, 780, 813, 858, 936, 975,
 24 and 1043; *see also* *Dias v. Bogin*, 1994 U.S. Dist. LEXIS 7447 at *4 (E.D. Pa. June 7, 1994)
 25 (“Once a defendant appears, he must proceed with reasonable dispatch to contest *in personam*
 26 jurisdiction.”); *Washington v. Baker Petrolite Corp.*, 2010 U.S. Dist. LEXIS 97037 at *10 (E.D.
 27 La. Aug. 23, 2010) (fact that defendant had participated in litigation in the state weighed in favor
 28 of finding that forum was reasonable).

1 Third, the effect of conflict with the sovereignty of China weighs in favor of jurisdiction.
 2 As the Ninth Circuit has observed, conflict with the sovereignty of the defendant's state "is not
 3 dispositive because, if given controlling weight, it would always prevent suit against a foreign
 4 national in a United States court." *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 926 (9th
 5 Cir. 2011) (quoting *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1333 (9th Cir. 1984)). Courts
 6 applying this factor analyze "the presence or absence of connections to the United States" *Id.*
 7 *DFSB Kollective Co., Ltd. v. Bing Yang*, 2013 U.S. Dist. LEXIS 46096 at *25 (N.D. Cal. Mar. 28,
 8 2013) (same). Given the evidence presented above, including BMCC's targeting of the United
 9 States because it was the largest CRT market in the world, BMCC "manifested an intent to serve
 10 and to benefit from the United States market." *Bauman*, 644 F.3d at 926. As such, this Court
 11 will not violate China's sovereignty by exercising jurisdiction here. *Id.* at 926-927.

12 Fourth, the United States has a significant interest in adjudicating the dispute. BMCC's
 13 conduct was directed at the United States and harmed corporations within it, including Plaintiffs.
 14 As such, the United States has a "manifest interest" in providing Plaintiffs with an effective
 15 means of redress. *Rudzewicz*, 471 U.S. at 473.

16 Fifth and sixth, the Northern District of California will be the most efficient forum and is
 17 critical to affording Plaintiffs convenient and efficient relief. This Court has already presided
 18 over this litigation for several years and is intimately familiar with the facts and issues that will
 19 need to be addressed. In addition, most of the evidence and witnesses are located in the United
 20 States as compared to China. *Bauman*, 644 F.3d at 927-928 (noting that courts analyze this factor
 21 by comparing alternative forums and that, among other things, courts look to where the witnesses
 22 and evidence are located).

23 Seventh, the existence of an alternative forum weighs in favor of exercising jurisdiction.
 24 An adequate alternative forum does not exist if the statute of limitations bars the bringing of a
 25 case in that forum. *Bauman*, 644 F.3d at 928-929. In China, the longest applicable statute of
 26 limitations for civil suits is two years. *In re World War II Era Japanese Forced Labor Litig.*, 164
 27 F. Supp. 2d 1160, 1182 (N.D. Cal. 2001). Because the relevant period for this action ends in
 28 2007, the statute of limitations would bar suit in China and, therefore, China is not an adequate

1 forum. *See* Best Buy FAC ¶ 1; Tech Data FAC ¶ 1; Target SAC ¶ 1.

2 In short, BMCC has not and cannot establish a “compelling case” that the exercise of
3 jurisdiction over it would be unreasonable.

4 **VII. THE COURT SHOULD PERMIT PLAINTIFFS TO CONDUCT JURISDICTIONAL
5 DISCOVERY IF IT FINDS INSUFFICIENT EVIDENCE OF BMCC’S MINIMUM
6 CONTACTS WITH THE UNITED STATES**

7 Plaintiffs submit that BMCC’s motion can and should be denied based upon the record
8 before the Court. Should the Court not agree that jurisdiction is appropriate as a matter of law,
9 Plaintiffs respectfully request that they be permitted to conduct jurisdictional discovery. Indeed,
10 “discovery should ordinarily be granted where pertinent facts bearing on the question of
jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.”
11 *Laub v. U.S. Dep’t of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003) (citing *Butcher’s Union Local
No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986)).

12 **VIII. BMCC HAS WAIVED ITS SERVICE OF PROCESS DEFENSE**

13 Like personal jurisdiction, insufficient service of process may be waived by omitting it in a
14 Rule 12(b) motion or by actively participating in litigation. *See, e.g., Schnabel v. Lui*, 302 F.3d at
15 1033 (finding that, under Rule 12(h)(1), defendant waived its lack of personal jurisdiction and
16 insufficiency of service of process defenses by failing to raise them in its first motion under Rule
17 12(b)); *In re Polyester Staple Antitrust Litig.*, 2008 U.S. Dist. LEXIS 43865 at *77-78 (finding
18 waivable Rule 12 defense waived where defendants participated in other actions within the
19 MDL); *see also* Fed. R. Civ. Proc. 12(h) (insufficient service of process is waivable defense).

20 Here, BMCC filed multiple Rule 12(b) motions in this MDL, but none of them contained
21 any argument that service of process was ineffective. *See* Dkt. Nos. 463, 479, 485, 546, 551, and
22 555. In fact, BMCC previously stipulated to accepting service of process. *See* Dkt. 936. Also, as
23 set forth above, BMCC has actively litigated this action for more than five years. Accordingly,
24 BMCC has waived an insufficient service of process defense.

25 **IX. THIS COURT HAS ALREADY RULED THAT PLAINTIFFS’ SERVICE ON
26 BMCC’S COUNSEL WAS PROPER**

27 This Court has repeatedly granted Rule 4 motions in this MDL, including Plaintiffs’ April
28

1 10, 2012 Rule 4 motion to effectuate service on BMCC through its United States counsel,
 2 Freshfields (the same counsel that has been representing BMCC in this litigation for over five
 3 years). *See* Dkt. Nos. 1147, 1241. Prior to granting Plaintiffs' Rule 4 motion, on September 3,
 4 2008, this Court granted a similar Rule 4 motion brought by the IPPs. *See* Dkt. Nos. 344, 374.

5 BMCC's motion repeats arguments already considered and rejected by the Court across this
 6 MDL and in similar cases. *See* Dkt. Nos. 1241, 374. In the LCD litigation, for instance, Judge
 7 Illston issued orders granting motions to serve defendants through their United States counsel
 8 pursuant to Rule 4 on twenty-one occasions. *See* Dkt Nos. 725, 1309, 1657, 1779, 2109, 2532,
 9 2539, 2584, 2747, 2748, 2825, 3079, 3217, 3345, 3394, 3443, 3654, 3655, 4785, 4797, and 4798.

10 The Court should summarily reject BMCC's arguments here. As the Court correctly noted
 11 in granting Plaintiffs' Rule 4 motion in these opt-out cases:

12 "Rule 4(f) of the Federal Rules of Civil Procedure sets forth the
 13 means for the service of process on a defendant in a foreign
 14 country. Subsection 4(f)(3) provides for services 'by other means
 15 not prohibited by international agreement as the Court orders.'
 That procedure does not require exhaustion of the other alternatives
 set forth in Rule 4(f), but is itself an independent means for service
 of process.

16 That method of service has already been used in the CRT cases. On
 17 September 3, 2008, this Court granted a motion by the indirect
 18 purchaser plaintiffs to serve process on two foreign corporations
 19 under rule 4(f)(3). [Citation omitted]. The only difference between
 20 that order and the present motions is that the defendants in the prior
 motions had United States subsidiaries where process could be
 served. However, that distinction is not material here, because Rule
 4(f)(3) does not require service on a subsidiary, but only 'by ...
 means not prohibited by international agreement.'

21 The objective of the rule is to require a process by which the
 22 defendant gets actual notice of the claim against it, and the
 23 opportunity to be heard. *Rio Properties*, 284 F.3d 1007 at 1016
 (9th Cir. 2002). Numerous cases have authorized the service of
 24 process on foreign defendants by serving their domestic counsel;
 see cases cited in the motion of the State of Florida, pp. 5 and 6.

25 The only response to the motion by BMCC is a letter dated May 1,
 26 2012 from the law firm of Freshfields, Bruckhaus, Deringer U.S.
 27 LLP of Washington D.C. Counsel advises that they have 'not been
 28 instructed to represent BMCC in the direct action cases or in the
 actions brought by the state attorneys general,' and that BMCC
 does not have U.S. subsidiaries. However, it is apparent from the
 record of these CRT cases that the law firm has appeared for
 BMCC in the CRT litigation, even though not in the actions

brought by the direct action plaintiffs or the state attorneys general. But BMCC has already appeared in this group of cases and has been represented by the Freshfields firm. It therefore appears certain that if process is now served on Freshfields, Freshfields will notify BMCC of that fact, and BMCC will then have actual knowledge of the claims brought against it by these additional plaintiffs. It should also be noted that BMCC has previously accepted service of the action by the indirect plaintiffs in this case.

* * *

The Special Master therefore recommends that the Court issue an order authorizing the direct action plaintiffs to serve ... Beijing Matsushita Color CRT Company, Ltd. through their local counsel ... pursuant to Federal Rule of Civil Procedure 4(f)(3).”

See Dkt. 1241 (original emphasis).¹⁰

Likewise, this Court has already considered and rejected BMCC’s argument that because China is a signatory to the Hague Convention, service under Rule 4 is preempted. As this Court previously explained, the “Hague Convention applies only when transmittal abroad is required.”

See Dkt. 374. Because BMCC has “domestic counsel, transmittal abroad for service is not required. The Hague Convention therefore does not prohibit service on [BMCC] under Rule 4(f)(3).” *Id.*

For these reasons, BMCC's motion pertaining to the propriety of service should be denied.

X. CONCLUSION

For all the foregoing reasons, BMCC's motion to dismiss should be denied.

Dated: January 17, 2014

Respectfully submitted,

By: /s/ David Martinez

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¹⁰ The Court adopted the Special Master's Report and Recommendations as an Order of the Court. See Dkt. 1241.

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